

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD A. KIRKHAM,)	CASE NO. C05-1282-JLR-MAT
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
JIM FERREL, Deputy Prosecuting Attorney,)	
)	
Defendant.)	
_____)	

On July 19, 2005, plaintiff presented to this Court for filing a civil rights complaint pursuant to 42 U.S.C. § 1983 together with an application to proceed with this action *in forma pauperis*. Plaintiff alleged in his complaint that defendant Jim Ferrel, a Deputy Prosecuting Attorney for King County, violated his rights to due process and equal protection, his right to a fair trial, and his right to prepare an effective defense, when defendant Ferrel disclosed to plaintiff's alleged victim/girlfriend the content of letters which had been illegally seized from plaintiff's jail cell. Plaintiff suggested that Mr. Ferrel's actions were intended to change the victim's testimony in the prosecution's favor.

On August 23, 2005, after reviewing plaintiff's documents, this Court issued an Order

01 granting plaintiff's application to proceed *in forma pauperis* and an Order directing plaintiff to
02 show cause why this action should not be dismissed because it appeared that the lone defendant
03 identified by plaintiff was immune from damages in this § 1983 action. On September 13, 2005,
04 plaintiff filed a response to the Court's Order to Show Cause together with a motion for leave to
05 file an amended complaint and a proposed amended complaint. Plaintiff argues in his response to
06 the Order to Show Cause that defendant Ferrel is not entitled to immunity because he abused his
07 position and did so with the sole intent of depriving plaintiff of a fair trial. However, because it
08 appears that defendant Ferrel was acting within the scope of his official duties when he engaged
09 in the allegedly improper conduct, he is nonetheless entitled to immunity from damages in this civil
10 rights action. *See Imbler v. Pachtman*, 424 U.S. 409 (1976).

11 Even assuming defendant Ferrel was not entitled to immunity, this action could not
12 proceed at the present time. Plaintiff alleges that defendant Ferrel's conduct deprived him of a fair
13 trial and the right to prepare a defense. However, plaintiff's state court criminal proceedings are
14 currently ongoing. Generally, the federal courts will not intervene in a pending state court criminal
15 proceeding absent extraordinary circumstances where the danger of irreparable harm is both great
16 and immediate. *See Younger v. Harris*, 401 U.S. 37 (1971). "[O]nly in the most unusual
17 circumstances is a defendant entitled to have federal interposition by way of injunction or habeas
18 corpus until after the jury comes in, judgment has been appealed from and the case concluded in
19 the state courts." *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972)(per curiam). *See also*
20 *Carden v. Montana* 626 F.2d 82, 83-84 (9th Cir. 1980). Plaintiff has made no showing of
21 extraordinary circumstances which would justify this Court's intervention in his ongoing state
22 court criminal proceedings. Plaintiff therefore may not proceed against defendant Ferrel at this

01 time.

02 As noted above, plaintiff seeks to amend his complaint to add new defendants and claims
03 to this action. However, all of plaintiff's proposed new claims appear to relate in some fashion
04 to his ongoing state court criminal proceedings. The *Younger* doctrine precludes this Court from
05 interfering in those proceedings. It would therefore serve no purpose to allow plaintiff to amend
06 his complaint at the present time.

07 For the foregoing reasons, this Court recommends that plaintiff's motion to amend his
08 complaint be denied and that plaintiff's complaint, and this action, be dismissed without prejudice.
09 A proposed Order accompanies this Report and Recommendation.

10 DATED this 25th day of October, 2005.

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13 Mary Alice Theiler
14 United States Magistrate Judge
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